

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

DERRECK RYAN GRAY,

Petitioner,

v.

JOE ALLBAUGH,

Respondent.

)
)
)
)
)
)
)
)
)
)

Case No. CIV-19-45-G

ORDER

This matter comes before the Court for review of the Report and Recommendation (Doc. No. 9) issued by United States Magistrate Judge Suzanne Mitchell pursuant to 28 U.S.C. § 636(b)(1)(B) and (C). Petitioner, a state prisoner appearing pro se, brought this action seeking habeas corpus relief under 28 U.S.C. § 2254.

On March 4, 2019, Petitioner filed an Application for Leave to Proceed *In Forma Pauperis* (Doc. No. 6). On March 6, 2019, Judge Mitchell issued an order notifying Petitioner that his application was deficient “because an authorized prison official ha[d] not certified Petitioner’s statement of institutional accounts as required by 28 U.S.C. § 1915(a)(1).” *See* Order (Doc. No. 7) at 1. Judge Mitchell ordered Petitioner to cure the deficiency on or before April 5, 2019. *Id.* On March 18, 2019, Petitioner filed a second Application for Leave to Proceed *In Forma Pauperis* (Doc. No. 8) but failed to cure the deficiency as ordered by Judge Mitchell.

Judge Mitchell recommends: (1) that Petitioner’s Applications for Leave to Proceed *In Forma Pauperis* (Doc. Nos. 6 and 8) be denied; and (2) that the Petition for a Writ of

Habeas Corpus (Doc. No. 1) be dismissed without prejudice unless Petitioner pays the \$5 filing fee within 21 days of any order adopting the Report and Recommendation. *See R. & R. at 2.*

Petitioner did not file a written objection to the Report and Recommendation within the allotted time period, nor has he requested additional time to object. Judge Mitchell specifically informed Petitioner of his right to object and the consequences of failing to do so. *See R. & R. at 2.* On April 22, 2019, however, Petitioner submitted payment of the \$5 filing fee. *See Doc. No. 10.*

IT IS THEREFORE ORDERED that:

1. The Report and Recommendation (Doc. No. 9) is ADOPTED;
2. Petitioner's Applications for Leave to Proceed *In Forma Pauperis* (Doc. Nos. 6 and 8) are DENIED;
3. Petitioner's action may proceed in light of his payment of the filing fee; and
4. The matter is rereferred to Judge Mitchell for further proceedings consistent with the original referral.

DATED this 23rd day of May, 2019.



CHARLES B. GOODWIN
United States District Judge